

)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. C2-99-1181
)	
OHIO EDISON COMPANY,)	Judge Sargus
PENNSYLVANIA POWER COMPANY,)	
subsidiaries of FIRSTENERGY)	Magistrate Judge Kemp
CORPORATION,)	
)	
Defendants.)	
)	

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

1. This is a civil action brought against the Defendants pursuant to Sections 113 and 167 of the Clean Air Act ("the Act"), 42 U.S.C. §§ 7413 and 7477, for injunctive relief and the assessment of civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act, 42 U.S.C. §§ 7470-92, the New Source Review ("NSR") provisions of the Act, 42 U.S.C. §§ 7501-

7515, New Source Performance Standards (“NSPS”) provisions of the Act, 42 U.S.C. § 7411 , and the federally approved and enforceable Ohio State Implementation Plan (“Ohio SIP”). Numerous times, Defendants modified, and thereafter operated, the W.H. Sammis coal-fired electricity generating power plant in Jefferson County, Ohio without first obtaining appropriate permits authorizing this construction and without installing the appropriate pollution control technology to control their emissions of nitrogen oxides, sulfur dioxide, and particulate matter, as the Act and the Ohio SIP require.

2. As a result of Defendants’ operation of the Sammis power plant following these unlawful modifications and the absence of appropriate controls, massive amounts of sulfur dioxide, nitrogen oxides, and particulate matter have been, and still are being, released into the atmosphere aggravating air pollution locally and far downwind from this plant. Defendants’ violations, alone and in combination with similar violations at other coal-fired electric power plants, have been significant contributors to some of the most severe environmental problems facing the nation today. An order of this Court directing these Defendants, forthwith, to install and operate the best available technology to control these pollutants, in conjunction with orders being sought in similar cases involving other coal-fired electrical power plants in the midwest and southern United States being filed by the United States, will produce an immediate, dramatic improvement in the quality of air breathed by tens of millions of Americans. It will reduce illness, protect lakes and streams from further degradation due to the fallout from acid rain, and allow the environment to restore itself following years, and in some cases decades, of illegal emissions.

3. Sulfur dioxide, nitrogen oxides, and particulate matter when emitted into the air can each have adverse environmental and health impacts. Electric utility plants collectively account for about 70

percent of annual sulfur dioxide emissions and 30 percent of nitrogen oxides emissions in the United States. Sulfur Dioxide ("SO₂") interacts in the atmosphere to form sulfate aerosols, which may be transported long distances through the air. Most sulfate aerosols are particles that can be inhaled. In the eastern United States, sulfate aerosols make up about 25 percent of the inhalable particles and according to recent studies, high levels of sulfate aerosols are associated with increased sickness and mortality from lung disorders, such as asthma and bronchitis. Lowering sulfate aerosol levels from electric utility plants may significantly reduce the incidence and the severity of asthma and bronchitis and associated hospital admissions and emergency room visits.

4. Nitrogen oxides ("NO_x") have numerous adverse effects on health and welfare. NO_x reacts with other pollutants and sunlight to form ground-level ozone, which scientists have long recognized as being harmful to human health and causing environmental damage. Ozone causes decreases in lung function (especially among children who are active outdoors) and respiratory problems leading to increased hospital admissions and emergency room visits. Ozone may inflame and possibly cause permanent damage to people's lungs. In addition, ozone causes damage to vegetation. Nitrogen dioxide ("NO₂"), one type of NO_x, is a dangerous pollutant that can cause people to have difficulty breathing by constricting lower respiratory passages; it may weaken a person's immune system, causing increased susceptibility to pulmonary and other forms of infections. While children and asthmatics are the primary sensitive populations, individuals suffering from bronchitis, emphysema, and other chronic pulmonary diseases have a heightened sensitivity to NO₂ exposure.

5. SO₂ and NO_x interact in the atmosphere with water and oxygen to form nitric and sulfuric acids, commonly known as acid rain. Acid rain, which also comes in the form of snow or sleet,

"acidifies" lakes and streams rendering them uninhabitable by aquatic life, and it contributes to damage of trees at high elevations. Acid rain accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural heritage. SO₂ and NO_x gases and their particulate matter derivatives, sulfates and nitrates, contribute to visibility degradation and impact public health. In this civil action, and in other civil actions filed concurrent with it, the United States intends to reduce dramatically the amount of SO₂ and NO_x that certain electric utility plants have been illegally releasing into the atmosphere. If the injunctive relief requested by the United States is granted in this case, and in others filed concurrent with it, many acidified lakes and streams will improve so that they may once again support fish and other forms of aquatic life. Visibility will improve, allowing for increased enjoyment of scenic vistas throughout the eastern half of our country. Stress to our nation's forests from Maine to Georgia will be reduced. Deterioration of our historic buildings and monuments will be slowed. In addition, reductions in SO₂ and NO_x will reduce sulfates, nitrates, and ground level ozone, leading to improvements in public health.

6. Particulate matter is the term for solid or liquid particles found in the air. Smaller particulate matter of a diameter of 10 micrometers or less is referred to as PM-10. Power plants are a major source of particulate matter ("PM"). Breathing PM at concentrations in excess of existing ambient air standards may increase the chances of premature death, damage to lung tissue, cancer, or respiratory disease. The elderly, children, and people with chronic lung disease, influenza, or asthma, tend to be especially sensitive to the effects of PM. PM can also reduce visibility and damage man-made materials. Reductions in PM illegally released into the atmosphere by the Defendants and others will significantly reduce the serious health and environmental effects caused by PM in our atmosphere.

JURISDICTION AND VENUE

7. This Court has jurisdiction of the subject matter of this action pursuant to Sections 113(b) and 167 of the Act, 42 U.S.C. §§ 7413(b) and 7477, and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

8. Venue is proper in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b), (c) and 1395(a), because the violations alleged occurred in this District, and the Defendants reside in this District.

NOTICES

9. On November 3, 1999, EPA issued a Notice of Violation to Defendants for Defendants' violations of the Act and the Ohio SIP. Pursuant to 42 U.S.C. §§ 7413(a)(1) and (b)(1), EPA provided copies of the Notice of Violation to the State of Ohio.

10. The 30-day period established in 42 U.S.C. § 7413, between issuance of the Notice of Violation and commencement of a civil action, has elapsed.

11. The United States has provided notice of the commencement of this action to the State of Ohio as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

THE DEFENDANTS

12. Ohio Edison Company ("Ohio Edison") is an owner and an operator of the W.H. Sammis Station ("Sammis Station") coal fired electric generation plant in Jefferson County, Ohio. Sammis Station generates electricity from seven steam generating boilers which are designated Sammis Units one through seven. Ohio Edison is a wholly owned subsidiary of FirstEnergy Corp. Ohio Edison is an

Ohio Corporation. Ohio Edison is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

13. Pennsylvania Power Company ("Pennsylvania Power") is an owner of the Sammis Station. Pennsylvania Power is a wholly owned subsidiary of Ohio Edison. Pennsylvania Power is a Pennsylvania corporation. Pennsylvania Power is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

STATUTORY AND REGULATORY BACKGROUND

14. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

The National Ambient Air Quality Standards

15. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare and the presence of which results from numerous or diverse mobile or stationary sources. For each such pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards ("NAAQS") requisite to protect the public health and welfare. Pursuant to Sections 108 and 109, EPA has identified and promulgated NAAQS for NO₂, SO₂, PM (now measured in the ambient air as PM 10) and ozone as such pollutants. 40 C.F.R. §§ 50.4 - 50.11.

16. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for

each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an “attainment” area. An area that does not meet the NAAQS is a “nonattainment” area. An area that cannot be classified due to insufficient data is “unclassifiable.”

17. At all times relevant to this complaint, the Sammis Station was located in an area, Saline Township, Jefferson County, Ohio, that had been classified as attainment or unclassifiable for the criteria pollutants, SO₂, NO₂ and PM/PM-10..

18. From November 15, 1990 until March 10, 1995, the Sammis Station was located in an area, Saline Township, Jefferson County, Ohio, that had been classified as non-attainment for the criteria pollutant ozone.

The Prevention of Significant Deterioration Requirements

19. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration ("PSD") of air quality in those areas designated as attaining the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. These provisions are referred to herein as the "PSD program."

20. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require states to adopt state implementation plans (“SIPs”) that contain emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in attainment areas.

21. A state may comply with Sections 110(a) and 161 of the Act by having its own PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166.

22. If a state does not have a PSD program that has been approved by EPA and incorporated into its SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 may be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).

23. On August 7, 1980 EPA disapproved Ohio's proposed PSD program. 45 Fed. Reg. 52741 (August 7, 1980). Accordingly, EPA promulgated the PSD regulations of 40 C.F.R. § 52.21(b) through (w) into the Ohio SIP at 40 C.F.R. § 1884, and delegated to Ohio the authority to implement the federal PSD program incorporated into the Ohio SIP. The regulations appearing at 40 C.F.R. § 52.21 are still incorporated and made a part of Ohio's SIP. 40 C.F.R. § 52.1884 (1998).

24. As set forth at 40 C.F.R. § 52.21(i), any major stationary source in an attainment area that intends to construct a major modification must first obtain a PSD permit.

25. Under the PSD program, a "major stationary source" is defined to include a fossil-fuel fired steam electric plants of more than 250 million British thermal units (Btu) per hour heat input which emit or have the potential to emit one hundred tons per year or more of any regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(a).

26. "Major modification" is defined at 40 C.F.R. § 52.21(b)(2)(i) as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the Act. "Significant" is defined at 40 C.F.R. § 52.21(b)(23)(i) in reference to a net emissions increase of the following pollutants, at a rate of

emissions that would equal or exceed any of the following: for SO₂, 40 tons per year, for NO_x, 40 tons per year; and for PM, 25 tons per year. "Net emissions increase" means "the amount by which the sum of the following exceeds zero: (a) Any increase in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] from a particular physical change or change in method of operation at a stationary source; and (b) Any other increases and decreases in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] at the source that are contemporaneous with the particular change and are otherwise creditable." 40 C.F.R. § 52.21(b)(3)(i).

27. As set forth at 40 C.F.R. § 52.21(j), a source with a major modification in an attainment area must install and operate best available control technology ("BACT") for each pollutant subject to regulation under the Act for which the modification would result in a significant net emissions increase.

28. As set forth in 40 C.F.R. § 52.21(m), any application for a PSD permit must be accompanied by an analysis of ambient air quality in the area.

29. As set forth at 40 C.F.R. § 52.21(k), the PSD program requires a person who wishes to modify a major source in an attainment area to demonstrate, before construction commences, that construction of the facility will not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount.

30. As set forth in 40 C.F.R. § 52.21(n), the owner or operator of a proposed modification must submit all information necessary to make any analysis or make any determination required under 40 C.F.R. § 52.21.

The Non-Attainment New Source Review Requirements

31. Part D of Title I of the CAA, 42 U.S.C. §§ 7501-7515, sets forth provisions for New Source Review “NSR” requirements for areas designated as nonattainment for purposes of meeting the NAAQS standards. These provisions are referred to herein as “Nonattainment NSR.” The Nonattainment NSR program is intended to reduce emissions of air pollutants in areas that have not attained NAAQS so that the areas make progress towards meeting the NAAQS.

32. Under Section 172(c)(5) of the Nonattainment NSR provisions of the CAA, 42 U.S.C. § 7502(c)(5), a state is required to adopt Nonattainment NSR SIP rules that include provisions that require that all permits for the construction and operation of modified major stationary sources within nonattainment areas conform to the requirements of Section 173 of the CAA, 42 U.S.C. § 7503. Section 173 of the CAA, in turn, sets forth a series of requirements for the issuance of permits for major modifications to major stationary sources within nonattainment areas. 42 U.S.C. § 7503.

33. In October of 1980, U.S. EPA conditionally approved Ohio's Nonattainment NSR SIP Rules. 45 Fed. Reg. 72119, 72122 (Oct. 31, 1980). On September 8, 1993, U.S. EPA approved revisions to Ohio's Nonattainment NSR SIP Rules. 58 Fed. Reg. 47211 (Sept. 8, 1993); see 40 C.F.R. § 52.1870(c)(83) and 1879 (1996). These Nonattainment NSR SIP Rules were promulgated pursuant to the Nonattainment NSR requirements of Part D of Title I of the CAA, 42 U.S.C. §§ 7501-7515. These SIP Rules are codified in the Ohio Administrative Code (“OAC”) at Chapter 3745-31-01 through 3745-31-08. See 40 C.F.R. §§ 52.1870(c)(83) and 1879 (1998).

34. Under the CAA and Ohio's approved Nonattainment NSR SIP Rules, no person may undertake a major modification of an existing major stationary source in a nonattainment area without first obtaining a Nonattainment NSR permit to install from the Ohio Environmental Protection Agency

("OEPA"). 42 U.S.C. §§ 7501-7515; OAC 3745-31-02(A). "Major modification" is defined by the CAA and the Ohio SIP as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the Act. 42 U.S.C. §§ 7501-7515 and OAC Chapter 3745-31-01 through 3745-31-08.

35. Section 182(f) of the Act, 42 U.S.C. § 7511a(f), sets forth requirements to take effect no later than November 15, 1992, relating to the construction and operation of new or modified major stationary sources of NO_x located within nonattainment areas for ozone. Section 182(f) of the Act, 42 U.S.C. § 7511a(f), defines NO_x as a pollutant that must be treated as a contributor to the criteria pollutant ozone.

36. Under the CAA and the Ohio's approved Nonattainment NSR SIP Rules, a "major stationary source" of NO_x is one that emits or has the potential to emit 100 tons per year or more and a "significant" net emissions increase of NO_x is one that would result in increased emissions of 40 tons per year or more. 42 U.S.C. § 7511a. "Net emissions increase" means "the amount by which the sum of the following exceeds zero: (a) Any increase in actual emissions [as defined by the CAA and the Ohio Nonattainment NSR SIP Rules, 42 U.S.C. §§ 7501-7515 and OAC Chapter 3745-31] from a particular physical change or change in method of operation at a stationary source; and (b) Any other increases and decreases in actual emissions [as defined by the CAA and the Ohio Nonattainment NSR SIP Rules, 42 U.S.C. §§ 7501-7515 and OAC Chapter 3745-31] at the source that are contemporaneous with the particular change and are otherwise creditable." 40 C.F.R. § 52.21(b)(3)(i).

37. Section 173 of Part D of the Act, 42 U.S.C. § 7503, and the Ohio SIP, OAC Chapter 3745-31-01 through 3745-31-08, require that in order to obtain a Nonattainment NSR permit, the owner or operator of a source undertaking a major modification must, among other things: (a) comply with the lowest achievable emission rate as defined in Section 171(3) of the Act, 42 U.S.C. § 7501(3)(a); (b) obtain federally enforceable emission offsets at least as great as the new or modified source*s emissions; (c) certify that all other major sources that it owns or operates within the Ohio are in compliance with the CAA; and (d) demonstrate that the benefits of the proposed source or modification significantly outweigh the environmental and social costs imposed as a result of its construction or modification.

The Ohio SIP General Permit Requirements

38. Under Section 110(a)(2)(C) of the CAA, 42 U.S.C. § 7410(a)(2)(C), each SIP must include a program to regulate the modification and construction of any stationary source of air pollution, including stationary sources that are "minor," i.e., not "major," in both attainment and nonattainment areas of the state, as necessary to assure that NAAQS are achieved.

39. In accordance with Section 110(a)(2) of the Act, the Ohio SIP at all relevant times has included provisions prohibiting the modification of any source or facility without obtaining a Permit to Install. OAC Chapter 3745-31.

40. The Ohio SIP general permit requirements, originally approved on May 31, 1972, 37 Fed. Reg. 10842, 10886, have been codified at all relevant times to this complaint at OAC Chapter 3745-31.

41. Under the Ohio SIP, any person who wishes to modify any source of air pollutants must first apply for and obtain a Permit to Install from OEPA. OAC 3745-31-02(A). A modification is defined by the Ohio SIP general permit requirements as any physical change in, or change in the method of operation of a source of air pollutants that increases the amount of air pollutants emitted. OAC 3745-31-01(E).

42. Under the Ohio SIP, in order to obtain a Permit to Install, the person modifying a source of air pollutants must employ the Best Available Technology, as determined by the source and the Director of OEPA, at the source to control the emissions of air pollutants. OAC 3745-31-05(A)(3).

43. Under the Ohio SIP, in order to obtain a Permit to Install, the person modifying a source of air pollutants must not prevent or interfere with the attainment or maintenance of a NAAQS. OAC 3745-31-05(A)(1).

New Source Performance Standards

44. Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), requires the Administrator of U.S. EPA to publish a list of categories of stationary sources that emit or may emit any air pollutant. The list must include any categories of sources which are determined to cause or significantly contribute to air pollution which may endanger public health or welfare.

45. Section 111(b)(1)(B) of the Act, 42 U.S.C. § 7411(b)(1)(B), requires the Administrator of U.S. EPA to promulgate regulations establishing federal standards of performance for new sources of air pollutants within each of these categories. "New sources" are defined as stationary sources, the construction or modification of which is commenced after the publication of the regulations or proposed

regulations prescribing a standard of performance applicable to such source. 42 U.S.C. § 7411(a)(2).

These standards are known as New Source Performance Standards (“NSPS”).

46. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits an owner or operator of a new source from operating that source in violation of a NSPS after the effective date of the applicable NSPS to such source.

47. Pursuant to Sections 111 and 114 of the Act, 42 U.S.C. §§ 7411, 7414, EPA promulgated 40 C.F.R. Part 60, Subpart A, §§ 60.1 - 60.19, which contains general provisions regarding NSPS.

48. 40 C.F.R. § 60.1 states that the provisions of 40 C.F.R. Part 60 apply to the owner or operator of any stationary source which contains an affected facility, the construction, reconstruction, or modification of which is commenced after the publication in Part 60 of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.

49. 40 C.F.R. § 60.2 defines "affected facility" as any apparatus to which a standard is applicable.

50. Pursuant to Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), at 40 C.F.R. §§ 60.40a-49a (Subpart Da) EPA has identified electric utility steam generating units as one category of stationary sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare.

51. EPA’s general NSPS provisions apply to owners or operators of any stationary source that contains an "affected facility" subject to regulation under 40 C.F.R. Part 60. EPA has also promulgated NSPS for various industrial categories, including electric utility steam generating units.

NSPS requirements for electric utility steam generating units for which construction or modification is commenced after September 18, 1978, are codified at 40 C.F.R. Part 60, Subpart Da, §§ 60.40a-49a.

52. The “affected facilities” to which Subpart Da applies are each “electric utility steam generating unit” that is capable of combusting more than 73 megawatts (250 million Btu/hour) heat input of fossil fuel (either alone or in combination with any other fuel) and for which construction or modification is commenced after September 18, 1978. 40 C.F.R. § 60.40a.

53. Under Subpart Da, “steam generating unit” means any furnace, boiler, or other device, other than nuclear steam generators, used for combusting fuel for the purpose of producing steam, including fossil-fuel-fired steam generators associated with combined cycle gas turbines. 40 C.F.R. § 60.41a.

54. An “electric utility steam generating unit”, under Subpart Da, means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatt (“MW”) electrical output to any utility power distribution system for sale. 40 C.F.R. § 60.41a.

55. “Modification” under NSPS is defined as “any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted.” 40 C.F.R. § 60.2. Under NSPS, any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a

modification within the meaning of Section 111 of the Act, 42 U.S.C. § 7411. 40 C.F.R. § 60.14(a). Following the promulgation of 40 C.F.R. § 60.14(h) in July, 1992, no physical change, or change in method of operation, is treated as a modification of an existing electric utility steam generating unit if such change does not increase the maximum hourly emissions of a pollutant to which a standard applies above the maximum hourly emissions achievable at the unit during the 5 years prior to the change. 40 C.F. R. § 60.14(h).

56. Under 40 C.F.R. § 60.14, upon modification, an existing facility becomes an “affected facility” for which the applicable NSPS must be satisfied.

57. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits the operation of any new source in violation of an NSPS applicable to such source. Thus, a violation of an NSPS is a violation of Section 111(e) of the Act.

58. Pursuant to 40 C.F.R. § 60.7(a), any owner or operator of an affected facility subject to NSPS must furnish written notification to EPA of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which a standard applies postmarked 60 days or as soon as practicable before the change is commenced with information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change.

59. Pursuant to 40 C.F.R. § 60.8, the owner or operator of an affected facility that is an electric utility steam generating unit must conduct a performance test in accordance with 40 C.F.R. § 60.48a within 60 days after achieving the maximum production rate at which the affected facility will be

operated, but not later than 180 days after initial startup of such facility and furnish EPA a written report of the results of such performance test.

60. Pursuant to 40 C.F.R. §§ 60.49a(b) and (i), the owner or operator of an electric utility steam generating unit subject to Subpart Da must submit quarterly reports to EPA containing certain emissions information.

61. Pursuant to 40 C.F.R. §§ 60.43a(a) and 60.44a(a), the owner or operator of an electric utility steam generating unit subject to Subpart Da, may not discharge into the atmosphere from the affected facility any gases which contain SO₂ or NO_x, respectively, in excess of the applicable limitations.

ENFORCEMENT PROVISIONS

62. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that:

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may . . .

* * *

(C) bring a civil action in accordance with subsection (b) of this section.

63. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that “Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever on the basis of any information available to the Administrator, the Administrator finds that any person has

violated, or is in violation of, any other requirement or prohibition of this subchapter . . . the Administrator may ... bring a civil action in accordance with subsection (b) of this subsection”

64. Section 113(b)(1) of the Act, 42 U.S.C. § 7413(b)(1), and 40 C.F.R. § 52.23 authorize the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day of violation for violations occurring on or before January 30, 1997 and \$27,500 per day for each such violation occurring after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan.

65. Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day of violation for violations occurring on or before January 30, 1997 and \$27,500 per day for each such violation occurring after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated, or is in violation of, requirements of the Act other than those specified in Section 113(b)(1), 42 U.S.C. § 7413(b)(1), including violations of Section 165(a), 42 U.S.C. § 7475(a) and Section 111, 42 U.S.C. § 7411.

66. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements.

67. At all times pertinent to this civil action, Sammis Station was a "major stationary source," within the meaning of the Act for NO_x, SO₂, and PM. Sammis Unit 6 is an "affected facility" that is subject to the requirements of NSPS.

FIRST CLAIM FOR RELIEF

(PSD Violations)

68. Paragraphs 1 through 67 are realleged and incorporated herein by reference.

69. At various times, Defendants commenced construction of modifications, as defined in the Act, at Sammis Station. These modifications included, but are not limited to: (1) replacing the reheater, furnace ash hopper boiler tubes, and secondary superheater outlet header of Sammis Unit 1 in 1993; (2) replacing the reheater, furnace ash hopper boiler tubes, and secondary superheater outlet header of Sammis Unit 2 in 1991; (3) replacing the reheater, furnace ash hopper boiler tubes, secondary superheater outlet header, front wall south cell boiler tubes, radiant downflow tubes, and furnace south sidewall tubes of Sammis Unit 3 in 1992; (4) replacing the furnace ash hopper boiler tubes, waterwall tubes, superheater third pass outlet header, and superheater control condenser tubes of Sammis Unit 4 in 1990; (5) replacing the vertical tube furnace with a spiral tube furnace on Sammis Unit 5 in 1984; (6) replacing the economizer, secondary superheater outlet pendant, and reheater outlet bank of Sammis Unit 5 in 1990; (7) replacing the horizontal reheater and economizer of Sammis Unit 6 in 1987; (8) replacing the burners, front and rear waterwall tubes, reheater riser and pendant tubes, first through third pass mix area walls, and coal pulverizer pipes of Sammis Unit 6 in 1992; (9) replacing the coal pulverizers of Sammis Unit 6 in 1998; (10) replacing the economizer, horizontal reheater, reheater riser tubes, turbine rotors, and front ash hopper tubes of Sammis Unit 7 in 1989; and

(11) replacing the waterwall panels of Sammis Unit 7 in 1991. Defendants constructed additional modifications to their plants beyond those described in this paragraph. These modifications resulted in significant net emission increases, as defined by 40 C.F.R. § 52.21(b)(3)(i), of one or more of the following: NO_x, SO₂, and PM.

70. Defendants violated and continue to violate Section 165(a) and 167 of the Act, 42 U.S.C. §§ 7475(a) and 7477 and the PSD regulations set forth in 40 CFR § 52.21 and incorporated into the Ohio SIP at 40 CFR § 52.1884, by, among other things, undertaking such major modifications and operating its facility after the modifications without obtaining a PSD permit as required by 40 CFR §§ 52.21(i)(1) and 52.21(r)(1). In addition, Defendants have not installed and operated BACT for control of NO_x, SO₂ and PM, as applicable, as required by 40 CFR § 52.21(j). Defendants have failed and continue to fail: to demonstrate that the construction or modification would not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount as required by 40 C.F.R. § 52.21(k); to perform an analysis of ambient air quality in the area as required by 40 C.F.R. 52.21(m); and, to submit to Ohio or EPA all information necessary to make any analysis or make those determinations required under 40 C.F.R. § 52.21 as required by 40 C.F.R. § 52.21(n).

71. Based upon the foregoing, the Defendants have violated and continue to violate Section 165(a) of the Act, 42 U.S.C. Section 7475(a), and 40 C.F.R. § 52.21. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

72. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day

for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SECOND CLAIM FOR RELIEF
(Nonattainment NSR Violations)

73. Paragraphs 1 through 67 are realleged and incorporated herein by reference.

74. At various times, Defendants commenced construction of modifications, as defined in the Act and the Ohio SIP, at Sammis Station. These modifications include, but are not limited to, the modifications described in paragraph 69, above. Some of these modifications occurred during time periods when Sammis was located in a nonattainment area for ozone. These modifications resulted in significant net emission increases, as defined by the CAA and the Ohio SIP, 42 U.S.C. §§ 7501-7515, OAC Chapter 3745-31, of NO_x.

75. Defendants violated and continue to violate the Nonattainment NSR provisions of the CAA and the Ohio SIP by, among other things, undertaking such major modifications and operating its facility after the modifications without obtaining a Nonattainment NSR permit as required by OAC 3745-31-02(A). In addition, as required by the CAA, 42, U.S.C. § 7501-7515, and OAC Chapter 3745-31, Defendants have not: (1) installed and operated LAER for control of NO_x; (2) obtained and operated with federally enforceable emission offsets at least as great as the modified source's emissions; (3) certified that all other major sources that they own or operate within Ohio are in compliance with the CAA, and; (4) demonstrated that the benefits of the modifications significantly outweigh the environmental and social costs imposed as a result of the modifications.

76. Based upon the foregoing, the Defendants have violated and continue to violate the Nonattainment NSR provisions of Part D of Title I of the CAA, 42 U.S.C. §§ 7501-7515, and OAC Chapter 3745-31. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

77. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Defendants to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

THIRD CLAIM FOR RELIEF

(Ohio SIP General Permit Requirement Violations)

78. Paragraphs 1 through 67 are realleged and incorporated herein by reference.

79. At various times, Defendants commenced construction of modifications, as defined in the Act and the Ohio SIP, at Sammis Station. These modifications include, but are not limited to, the modifications described in paragraph 69, above.

80. Defendants violated and continue to violate the Ohio SIP General Permit provisions by, among other things, undertaking such modifications and operating its facility after the modifications without obtaining a Permit To Install as required by OAC 3745-31-02(A). In addition Defendants have not installed and operated Best Available Technology following the modifications as required by OAC 3745-31-05(A)(3), and have not demonstrated that the modification will not interfere with the attainment or maintenance of a NAAQS as required by OAC 3745-31-05(A)(1).

81. Based upon the foregoing, the Defendants have violated and continue to violate the Ohio SIP General Permit provisions of OAC Chapter 3745-31. Unless restrained by an order of this Court, these and similar violations of the Ohio SIP will continue.

82. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Defendants to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FOURTH CLAIM FOR RELIEF
(NSPS violations)

83. Paragraphs 1 through 67 are realleged and incorporated herein by reference.

84. Defendant Ohio Edison is the "owner or operator," within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of an electric utility steam generating unit within the meaning of 40 C.F.R. §§ 60.40a and 60.41a, designated Sammis Unit 6, located at Sammis Station.

85. Sammis Unit 6 is an "affected facility" under Subparts A and Da of NSPS and is subject to the NSPS, including provisions of Subpart A and Da of the NSPS.

86. At various times, Defendant Ohio Edison undertook the "modification" of an "affected facility" at Sammis Station Unit 6 as those terms are defined in the NSPS. 40 C.F.R. § 60.2. These modifications include replacing the burners of Sammis Unit 6 in 1992 and replacing the coal pulverizers of Sammis Unit 6 in 1998. Each of these modifications increased the gross Megawatt generation

capacity at Sammis Unit 6 and the maximum hourly emission rate of PM, SO₂, and NO_x from Sammis Unit 6 above the maximum hourly emissions achievable at that unit during the applicable time period prior to the change.

87. With regard to each modification of Unit 6, Defendant Ohio Edison failed to furnish written notification to EPA or the state of Ohio of the physical changes to the Unit which may have increased the emission rate of any air pollutant to which a standard applies postmarked 60 days or as soon as practicable before the change is commenced with information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change as required by 40 C.F.R. § 60.7(a).

88. Defendant Ohio Edison failed to conduct a performance test in accordance with the procedures required by § 60.48a within 60 days after achieving the maximum production rate or within 180 days after initial startup at Sammis Unit 6 and furnish a written report of the results of such performance test to EPA after each of the modifications in violation of 40 C.F.R. § 60.8.

89. Defendant Ohio Edison failed to report emission information following the modifications listed above in violation of 40 C.F.R. §§ 60.49a(b) and (i).

90. Defendant Ohio Edison failed to comply and continues to fail to comply with the NSPS emissions limitations applicable to Unit 6 for at least one of the following pollutants -- PM, SO₂, and NO_x, and -- after the modifications listed above in violation of 40 C.F.R. §§ 60.42a, 60.43a, and 60.44a.

91. Each day that Defendant Ohio Edison fails to comply with each of the NSPS requirements described in this Complaint constitutes a violation of the NSPS regulations and the Act.

92. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant Ohio Edison is subject to injunctive relief and civil penalties up to \$25,000 per day of violation for violations occurring on or before January 30, 1997 and \$27,500 per day for each such violation occurring after January 30, 1997 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701. Unless enjoined by this Court, Defendant Ohio Edison will continue to violate the requirements of the NSPS and the Act.

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in paragraphs 1 through 92 above, the United States of America requests that this Court:

1. Permanently enjoin the Defendants from operating the Sammis Station , except in accordance with the Act and any applicable regulatory requirements;
2. Order Defendants to remedy their past violations by, among other things, requiring Defendants to install, as appropriate, the best available control technology, lowest achievable emission rate technology, or best available technology, on the Sammis Station for each pollutant subject to regulation under the Act;
3. Order Defendants to apply for a permit that is in conformity with the requirements of PSD provisions of the Act and the Ohio SIP, the NSR provisions of the Act and the Ohio SIP, and the general permit provisions of the Ohio SIP;

4. Order Defendants to comply with the NSPS provisions of the Act;
5. Order Defendants to conduct audits of their operations to determine if additional modifications have occurred which would require them to meet any applicable requirements of the Act or the Ohio SIP and report the results of these audits to the United States;
6. Order Defendants to take other appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the violations of the Clean Air Act alleged above;
7. Assess a civil penalty against Defendants of up to \$25,000 per day for each violation of the Act and applicable regulations, and \$27,500 per day for each such violation after January 30, 1997;
8. Award Plaintiff its costs of this action; and
9. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

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